

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

BRG LLC, t/a BRG PROPERTIES,)	
)	C.A. No. U508-06-0144AP
Plaintiff-Below,)	
Appellant,)	
)	
v.)	
)	
ROBERT N. BRINSFIELD,)	
)	
Defendant-Below,)	
Appellee.)	

March 4, 2010

Thomas R. Riggs, Esq.
824 Market St., Suite 904
P O Box 1351
Wilmington, DE 19899
Attorney for the Plaintiff

William W. Pepper, Sr., Esq.
414 S. State Street
P O Box 497
Dover, DE 19901
Attorney for the Defendant

DECISION AFTER TRIAL

Plaintiff-Below/Appellant, BRG LLC ("Plaintiff"), has filed a civil appeal with this Court for a trial *de novo* from a final order of the Justice of the Peace Court. Plaintiff contends that Defendant-Below/Appellee, Robert N. Brinsfield ("Defendant"), caused extensive damage to commercial property he rented from Plaintiff, which amounts to \$12,622.50. Defendant maintains that Plaintiff's claims are overstated, and that his \$2,000.00 unreturned security deposit and \$1,885.00 he overpaid in rent cover any

damages caused by him. Following trial on this matter, the Court enters judgment for Defendant.

FACTS

On March 5, 2004, Defendant entered into a three-year lease agreement with Katheryn Amato ("Ms. Amato") for commercial property, to be used as a karate studio. The term of the lease ran from April 1, 2004, until March 31, 2007, with a monthly rent amount of \$2,935.00,¹ and a security deposit of \$2,000.00. Paragraph 7 of the lease provided, as follows:

Tenant shall ascertain from Owner within thirty (30) days before the end of the lease term, whether Owner desires to have the premises or any parts thereof restored to their original condition when they were delivered to Tenant; if Owner shall so desire, Tenant shall restore the premises or any such part or parts thereof as designated by Owner to their original condition, as above, entirely at Tenant's own cost and expense.

Ms. Amato had occupied the two-story property since it was built in 1984, and had used it as a flower shop. A center wall divided the first floor of the property. There was also a walk-in cooler located on the first floor. The first floor's interior walls had wood paneling, which Ms. Amato partially covered with adhesive and craft paper before renting the property to Defendant. The second floor was used as office and storage space. A portion of the second floor was occupied by another tenant during the first few months of Defendant's lease.

Because the property was to be used as a karate studio, several modifications to the first floor were necessary. Ms. Amato testified at trial that she gave Defendant "carte blanche" to make whatever changes were necessary. Defendant removed the center wall and walk-in cooler. Once the center wall was removed, a new ceiling grid and tiles were added to fill in the space previously occupied by the wall. Defendant also added two freestanding dressing rooms. Michelle Brinsfield, Defendant's wife ("Mrs. Brinsfield"), testified that they did not purchase enough ceiling tiles to completely fill in the ceiling. Mrs. Brinsfield further testified that the parents of the karate students painted the craft

¹ The lease required \$2,000.00 monthly rent payments from April 2004 until September 2004, with a rent increase to \$2,935.00 beginning in October 2004.

paper-covered portion of the paneling, as well as the wood trim, on the first floor of the property.

In August 2004, Plaintiff purchased the property from Ms. Amato. Defendant's lease, along with all rights and duties thereto, was assigned to Plaintiff. Defendant made monthly payments of \$3,000.00 to Plaintiff from October 2004 until March 2007.² When the lease expired on March 31, 2007, Defendant did not renew the lease and vacated the property.

After Defendant vacated the property, Samuel Tuttle ("Mr. Tuttle"), a commercial realtor familiar with the property, performed an inspection on behalf of Plaintiff and documented substantial damage to the property. Mr. Tuttle's report indicates, as follows:

Downstairs: Broken toilet seat. Two fluorescent light fixture covers either broken or missing. Construction (unauthorized) of certain rooms remain unfinished, and lack things like electric. Much damaged ceiling tiles, and some missing. Emergency exit lighting improperly placed. One hole punched or kicked through a wall. Moldings partially removed that must be replaced. Floor covering missing – no tile or carpet at all.

Upstairs: Panic bar removed from exit door, and other hardware missing. Damaged ceiling tiles. One window blind missing; one damaged. Window screens missing and damaged. Abandoned furniture needs to be removed.

Outside: Trash remains on premises. Missing and damaged window screens. Broken rear light fixture.

Other: Walls need to be repainted throughout. The premises were left in deplorable condition, and were not "broom clean" as required by the Lease.

Plaintiff alleges that Defendant caused damages to the property in the amount of \$12,622.50. At trial, Plaintiff called James Simpson ("Mr. Simpson"), a general contractor who inspected the property and made certain repairs. Mr. Simpson testified that the damaged and missing ceiling tiles on the first and second floors of the property, and the ceiling grid on the first floor, needed to be replaced. Mr. Simpson also stated that the paneling, damaged by the craft paper and paint, along with additional paneling and

² Defendant overpaid the rent by \$65.00 each month, resulting in \$1,885.00 in overpaid rent between October 2004 and March 2007.

trim which was damaged by paint, needed to be removed and replaced. He further testified that damaged drywall needed to be replaced, prepared, and painted, a broken panic bar needed to be reinstalled, and built-in shelving and freestanding closets erected by Defendant needed to be removed. Mr. Simpson's total proposed cost for the repairs was \$9,182.00.

Plaintiff also called Carmen Romano ("Mr. Romano"), a master electrician. Mr. Romano testified that there was illegal wiring on the first floor of the property, as well as broken lights and shields. He stated that an extension cord was hanging from the ceiling into the freestanding dressing rooms, an exit sign was hanging improperly, and that wiring appeared to be stapled to the walls on the first floor. Mr. Romano estimated the cost to repair these items at \$1,715.00.

DISCUSSION

In a claim for damages to a rental property, the plaintiff has the burden of proof of those damages by a preponderance of the evidence. *Calo v. Ruckle*, 2000 WL 33653934, at *2 (Del. Com. Pl.). Plaintiff has provided the Court with photographs and witness testimony concerning the extent and cost of damages to the property. The Court, however, finds that Plaintiff has not proven by a preponderance of the evidence that all of the damage was caused by Defendant, or that that damage was not the result of normal wear and tear. The Court finds that only a portion of the damage to the property is attributable to Defendant, and that Defendant's security deposit and overpayment of rent covers such damage.

I. The Ceiling Tiles and Grid

After reviewing the photographs of the ceiling and the testimony of the witnesses, the Court finds that Defendant is responsible for replacing the ceiling grid and missing ceiling tiles on the first floor, but, is not responsible for any damaged ceiling tiles on the first or second floor of the property. This building was nearly twenty years old when Defendant leased the property, and much of the wear and tear on the ceiling tiles can surely be attributed to the amount of time they were in place. Mr. Simpson testified that the cost to replace ceiling tile is \$1.25 per square foot. His invoice indicates that the cost

for repairing the ceiling grid and replacing the missing tiles is \$624.00, plus another \$325.00 to replace missing and broken ceiling tile throughout the building. Defendant is only responsible for the ceiling grid and the broken and missing tile associated with the removal of the center wall. Therefore, the Court finds that a reasonable cost of repairs attributable to Defendant for the ceiling tiles and grid is \$624.00.

II. The Paneling

Photographic evidence provided to the Court shows that the wood paneling has been damaged by paint and craft paper. Mrs. Brinsfield testified that the karate students' parents painted the craft paper and the trim, and that some paint ended up on the wood paneling. Ms. Amato testified that she pasted the craft paper to the paneling before Defendant entered into the lease. Defendant, therefore, cannot be responsible for any damage caused by the craft paper. He is, however, responsible for the paint that was applied to the paneling and wood trim.

Mr. Simpson testified that the painted paneling and trim needed to be removed, and the underlying wall prepared and painted. While this might be necessary for the portions of paneling with the craft paper attached, this drastic remedy is not necessary for the painted paneling and trim, which could be primed and painted over. Mr. Simpson's invoice shows the total cost of removing the paneling and preparing and painting the underlying wall to be \$1,800.00. Defendant is only responsible for a small percentage of this damage. The Court finds that a reasonable amount of damage to the paneling attributable to Defendant is in the amount of \$400.00.

III. The Drywall

Defendant admitted that because the first floor was used as a karate studio, damage was done to the drywall. One photograph shows a sizeable hole in the wall, which Defendant claims was present when he rented the property. The Court finds that Defendant is liable for the reasonable cost to repair this hole, in the amount of \$150.00.

IV. The Freestanding Closets, Built-Ins, and Abandoned Furnishings

The lease required that Defendant notify Plaintiff within thirty days of the end of the lease concerning the removal of any additions made to the property. Defendant testified that he did not contact Plaintiff to ask if Plaintiff wanted the freestanding closets on the first floor removed or the office furniture on the second floor removed. Therefore, Defendant is liable for the cost of having these items removed from the property. Mr. Simpson's invoice shows that the cost to remove the furniture from the second floor was \$200.00. The Court finds that the same amount would be a reasonable cost to remove the freestanding closets from the first floor. Defendant must pay \$400 for the cost to remove the freestanding closets and abandoned furniture. Plaintiff failed to prove by a preponderance of the evidence that Defendant installed the built-in shelving on the second floor, and Defendant is not responsible for its removal.

V. The Electrical Repairs

The Court finds that Defendant is not responsible for any illegal wiring that may exist on the property, and that any broken lights, light shields, or cracked outlets are the result of normal wear and tear. Defendant is responsible, however, for the extension cord hanging from the ceiling and the improperly hanging exit sign. Mr. Romano did not quantify an amount to repair only these damages, but estimated that the cost to fix all of the electrical damages amounts to \$1,715.00. The Court finds that \$225.00 is a reasonable amount to attribute to Defendant to properly hang the exit sign. No cost is attributed to Defendant for unplugging the extension cord.

VI. Miscellaneous Repairs

Plaintiff failed to show that Defendant is responsible for any other damage to the property, including, but not limited to, the missing window blinds and screens, the broken toilet seat, the broken panic bar, and any painting needed to be applied to the walls. Furthermore, the Court finds that any damage to the toilet seat, panic bar, and non-paneled portions of the walls, amount to normal wear and tear.

VII. Offsets

The total amount of damages awarded to a landlord is subject to an offset by the amount of a tenant's unreturned security deposit. *Gately v. Carey*, 2008 WL 4379600, at #1 (Del. Com. Pl.); *J.R. Partners, LLC v. Dimensional Stone Prods.*, 2007 Awl 2284549, at #6 (Del. Com. Pl.); *Kozel v. Mulligan's Pizza*, 2007 WL 1248202, at *2 (Del. Com. Pl.). This offset reduces the total amount of damages awarded to a landlord by the security deposit provided by the tenant at the commencement of the lease. *Gately*, 2008 WL 4379600, at *1. Additionally, Defendant is entitled to an offset for his overpayment of rent to Plaintiff.

In this matter, Plaintiff has proven damages in the amount of \$1,799.00 are attributable to Defendant, which is offset by the \$2,000.00 security deposit already paid by Defendant and Defendant's overpayment of rent to Plaintiff in the amount of \$1,885.00.

CONCLUSION

As a result of the Court's finding of fact, which is based upon the entire record, including all direct and circumstantial evidence, and all the references therefrom, and the Court's above-referenced conclusions of law, the Court enters judgment for Defendant as the amount of his offset exceeds the amount due to Plaintiff for damages to the rental unit.

IT IS SO ORDERED this 4th day of MARCH, 2010.



CHARLES W. WELCH
JUDGE